

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALLSTATE INDEMNITY
COMPANY,

CASE NO. C20-1508JLR

ORDER

Plaintiff,

V.

RANDY LINDQUIST, et al.,

Defendants.

I. INTRODUCTION

Before the court is Defendant Randy Lindquist’s motion for partial summary judgment. (Mot. (Dkt. # 147); Reply (Dkt. # 166).) Plaintiff Allstate Indemnity Company (“Allstate”) opposes Mr. Lindquist’s motion, moves for a continuance under Federal Rule of Civil Procedure 56(d), and also cross-moves for partial summary judgment on its alleged violations of Washington insurance regulations and bad faith conduct. (X-MSJ (Dkt. # 162); X-MSJ Reply (Dkt. # 181).) Mr. Lindquist opposes

1 Allstate's cross-motion. (X-MSJ Resp. (Dkt. # 177).) After the parties completed
 2 briefing on the partial summary judgment cross-motions, Allstate moved for leave to file
 3 a supplemental brief in opposition to Mr. Lindquist's motion for partial summary
 4 judgment. (MFL (Dkt. # 192); MFL Reply (Dkt. # 200).) Mr. Lindquist opposes the
 5 motion for leave. (MFL Resp. (Dkt. # 198).)

6 The court has considered the parties' submissions, the relevant portions of the
 7 record, and the applicable law. Being fully advised,¹ the court DENIES Allstate's motion
 8 for a continuance; DENIES Allstate's motion for leave to supplement its opposition brief;
 9 GRANTS in part and DENIES in part Mr. Lindquist's motion for partial summary
 10 judgment; and GRANTS in part and DENIES in part Allstate's cross-motion for partial
 11 summary judgment.

12 **II. BACKGROUND**

13 This case stems from a fire that burned down Mr. Lindquist's house at 6920 Fisher
 14 Road in Edmonds, Washington (the "Fisher Road House") on December 25, 2019.
 15 (Compl. (Dkt. # 1) ¶¶ 3.12.) The Fisher Road House was insured by a homeowner's
 16 insurance policy that Allstate issued in 2004 and renewed on an annual basis thereafter.
 17 (See Argiannis Decl. (Dkt. # 72) ¶ 3, Ex. A (the "Policy"); see also 10/25/21 Ruiz Decl.
 18 (Dkt. # 104) ¶ 2, Ex. A ("Grondahl Dep. Tr.") at 121:6-122:11.) The court incorporates
 19 by reference the summation of the factual background contained in its November 24,
 20 //

21 ¹ The parties do not request oral argument on any of the pending motions and the court
 22 concludes that oral argument would not be helpful to its disposition of the motions. See Local
 Rules W.D. Wash. LCR 7(b)(4).

1 2021 order (*see* 11/24/21 Order (Dkt. # 117) at 2-5), and discusses below the specific
 2 facts pertinent to the current motions in its analysis of the issues presented therein.

3 III. ANALYSIS

4 The court begins by addressing Allstate's motion for a continuance under Federal
 5 Rule of Civil Procedure 56(d) and its motion for leave to supplement its opposition to Mr.
 6 Lindquist's motion for partial summary judgment. After addressing those motions, the
 7 court turns to consider Mr. Lindquist's motion for partial summary judgment and
 8 Allstate's cross-motion for partial summary judgment.

9 A. Allstate's Motion for a Continuance

10 Allstate requests a continuance under Federal Rule of Civil Procedure 56(d),
 11 which permits the court to defer its consideration of a summary judgment motion, or to
 12 deny the motion outright, in order to permit the Rule 56(d) movant "time to obtain
 13 affidavits or declarations or to take discovery." Fed. R. Civ. P. 56(d); (X-MSJ at 1). To
 14 obtain relief under Rule 56(d), "[t]he requesting party must show: (1) it has set forth in
 15 affidavit form the specific facts it hopes to elicit from further discovery; (2) the facts
 16 sought exist; and (3) the sought-after facts are essential to oppose summary judgment."
 17 *Fam. Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th
 18 Cir. 2008) (citing *Cal. on behalf of Cal. Dep't of Toxic Substances Control v. Campbell*,
 19 138 F.3d 772, 779 (9th Cir. 1998)).

20 Allstate asserts that it needs more time "to complete the depositions of" Roger
 21 Howson and Terry Eggert—two individuals on whose declarations Mr. Lindquist partly
 22 relies—"in order to ascertain" (X-MSJ at 2) "whether Mr. Eggert took into account the

1 relative property damage when conducting his valuation” (O’Neill Decl. (Dkt. # 163)
 2 ¶ 17)). Allstate fails to show that it lacked adequate time to develop these facts and the
 3 court doubts it did, since the record plainly shows that Allstate has known since Mr.
 4 Lindquist’s examination under oath (“EOU”) in August 2020 that Mr. Lindquist worked
 5 with Mr. Howson and Mr. Eggert to develop valuation estimates for the destroyed
 6 personal property and structural damage in connection with the claim he submitted to
 7 Allstate. (*See* 11/12/20 Leid Decl. (Dkt. # 9) ¶ 5, Ex. C (“Lindquist EOU”) at 87:3-10
 8 (Allstate’s counsel asking Mr. Lindquist about how he described his personal property to
 9 Mr. Howson in the course of developing a personal property inventory and replacement
 10 cost estimate); *id.* at 109:4-10 (Allstate’s counsel describing a spreadsheet provided by
 11 Mr. Lindquist’s counsel on August 12, 2020 that refers to Mr. Eggert’s firm, D2
 12 Consulting); *see also* 3/10/22 Ruiz Decl. (Dkt. # 148) ¶ 17, Ex. 16 (showing Allstate
 13 received Mr. Lindquist’s “Proof of Loss for Structure, Personal Property, and Other
 14 Structures” on August 13, 2020).)

15 Nor does Allstate demonstrate that “the sought-after facts are essential to oppose
 16 summary judgment.” *Fam. Home & Fin. Ctr., Inc.*, 525 F.3d at 827. The testimony
 17 Allstate hopes to elicit by re-deposing Mr. Howson or Mr. Eggert might serve to undercut
 18 the accuracy of their valuations, but would do nothing to rebut the purpose for which Mr.
 19 Lindquist relies on their testimony: “to establish . . . that the proofs of loss were
 20 submitted to Allstate and when; that [Mr.] Howson and [Mr.] Eggert were the authors;
 21 that their work occurred after the joint effort by Allstate and Paul Davis to demolish the
 22 property; and that Allstate did not reach out to them.” (Reply at 3.) Moreover, the

1 discovery deadline has passed and the court previously denied Allstate's request for
 2 additional time to take discovery against Mr. Howson. (*See* 5/6/22 Order (Dkt. # 194) at
 3 6-7.)

4 Accordingly, Allstate's motion for a continuance under Rule 56(d) is DENIED.

5 **B. Allstate's Motion for Leave to File a Supplemental Opposition Brief**

6 Allstate also asks for leave to file a supplemental brief in opposition to Mr.
 7 Lindquist's motion for partial summary judgment. (*See* MFL.) Allstate's deadline for
 8 opposing Mr. Lindquist's motion for partial summary judgment was March 28, 2022 (*see*
 9 MSJ); *see also* Local Rules W.D. Wash. LCR 7(d)(3), and Allstate filed a timely
 10 opposition brief on that date (*see* X-MSJ). Allstate seeks relief from the March 28, 2022
 11 deadline and permission to supplement that opposition in order to add additional
 12 arguments relating to: (1) a July 12, 2019 letter sent by Mr. Lindquist's bankruptcy
 13 counsel, Craig Sternberg, to JPMorgan Chase Bank, N.A. ("Chase") regarding a possible
 14 settlement of the foreclosure action Chase maintains against Mr. Lindquist; and
 15 (2) testimony Mr. Lindquist gave in his bankruptcy proceeding on September 11, 2013.
 16 (*See* MFL at 2-3; 4/14/22 O'Neill Decl. (Dkt. # 173) ¶ 9, Ex. G ("Sternberg Letter");
 17 5/4/22 O'Neill Decl. (Dkt. # 193) ¶ 3, Ex. 1 (bankruptcy transcript).) It contends that it
 18 "has good cause" for its request because the evidence about which it desires to make
 19 supplemental arguments is "newly discovered," and reveals "**significant** discovery
 20 deficiencies" by Mr. Lindquist and his counsel that prohibited Allstate from obtaining
 21 this information earlier despite its diligence. (*See* MFL at 2 (emphasis in original).)

22 //

1 “A motion for relief from a deadline should, whenever possible, be filed
 2 sufficiently in advance of the deadline to allow the court to rule on the motion prior to the
 3 deadline.” Local Rules W.D. Wash. LCR 7(j). The court may grant relief from fixed
 4 deadlines only “for good cause.” *See Fed. R. Civ. P. 6(b).* “This standard ‘primarily
 5 considers the diligence of the party seeking the amendment.’” *Coleman v. Quaker Oats
 6 Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000) (quoting *Johnson v. Mammoth Recreations,
 7 Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)).

8 With respect to the Sternberg Letter, the court previously concluded Allstate’s
 9 predicament is the result of its own lack of diligence in pursuing discovery against Mr.
 10 Sternberg, not any discovery abuse perpetrated by Mr. Lindquist. (*See* 5/6/22 Order at 9.)
 11 The result is the same now that Allstate lays the blame for this letter having not come to
 12 light earlier at Chase’s feet. Chase, like Mr. Lindquist, did not need to disclose the
 13 Sternberg Letter in response to Allstate’s discovery requests, as those requests only asked
 14 for information and documents relating to agreements Chase had “entered into” with Mr.
 15 Lindquist. (*See* 5/13/22 O’Neill Decl. (Dkt. # 201) ¶ 4, Ex. 2; *see also id.* ¶ 5, Ex. 3;
 16 5/6/22 Order at 9-10 (noting that the settlement proposal at issue in the Sternberg Letter
 17 never came to pass).) Thus, the court is left to conclude, once again, that Allstate failed
 18 to exercise reasonable diligence by waiting to seek discovery against Mr. Sternberg or
 19 bring the resulting dispute to the court’s attention. (*See* 5/6/22 Order at 6.) Even setting
 20 its diligence in discovery aside, Allstate offers no justification for filing its motion for
 21 leave more than three weeks after it received the Sternberg Letter on April 8, 2022. (*See*
 22 MFL Reply at 2.)

1 Allstate has even less ground to stand on with respect to the 2013 bankruptcy
2 proceeding transcript. Allstate has known about Mr. Lindquist's bankruptcy since shortly
3 after the Fisher Road House burned down. (*See* 4/25/22 Knudsen Decl. (Dkt. # 184) ¶ 7,
4 Ex. C (claim file entry from January 2020 noting Mr. Lindquist's bankruptcy
5 proceeding); *see also* Lindquist EOU at 17:1-14.) Indeed, Allstate has argued since the
6 very beginning of this case that Mr. Lindquist's representations to the bankruptcy court
7 were inconsistent with the valuations he later submitted with his proofs of loss. (*See*
8 Compl. ¶¶ 3.7, 4.5; *see also* Estoppel MSJ (Dkt. # 8) at 6 (describing "inconsistent
9 positions").) Allstate's apparent failure to pursue the testimony given by Mr. Lindquist
10 in his bankruptcy proceeding until recently reflects a lack of diligence.

11 Because Allstate fails to demonstrate that it diligently pursued the information
12 about which it now seeks to make supplemental arguments, the court concludes that good
13 cause does not exist to allow Allstate a further opportunity to oppose Mr. Lindquist's
14 motion for partial summary judgment. Accordingly, its motion for leave is DENIED.

15 **C. Cross-Motions for Partial Summary Judgment**

16 Mr. Lindquist asks the court to grant partial summary judgment in his favor on
17 seven issues: (1) that he did not misrepresent any material facts to Allstate in the course
18 of its claim investigation; (2) that coverage is not excluded under the Policy's vandalism
19 provision; (3) that he did not abandon the Fisher Road House; (4) that he did not
20 intentionally cause the fire; (5) that Allstate violated Washington insurance regulations
21 found in the Washington Administrative Code ("WAC") at 284-30-330(4)-(5),
22 284-30-370, and 284-30-380(1); (6) that Allstate engaged in bad faith; and that, as a

1 result, (7) he is entitled to coverage. (*See* Mot. at 12.) Allstate opposes partial summary
2 judgment in Mr. Lindquist's favor on each of these issues, and also cross-moves for
3 partial summary judgment in its own favor on the alleged insurance regulation violations
4 and on its alleged bad faith conduct. (X-MSJ at 10-11.)

5 The court first discusses the legal standard that applies to cross-motions for
6 summary judgment before considering the parties' arguments.

7 1. Legal Standard

8 Under Rule 56 of the Federal Rules of Civil Procedure, either "party may move
9 for summary judgment, identifying each claim or defense—or the part of each claim or
10 defense—on which summary judgment is sought." Fed. R. Civ. P. 56. Summary
11 judgment is appropriate if the evidence, when viewed in the light most favorable to the
12 non-moving party, demonstrates "that there is no genuine dispute as to any material fact
13 and the movant is entitled to judgment as a matter of law." *Id.*; *see Celotex Corp. v.*
14 *Catrett*, 477 U.S. 317, 322 (1986). A dispute is "genuine" if "the evidence is such that a
15 reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty*
16 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if it "might affect the
17 outcome of the suit under the governing law." *Id.*

18 The moving party bears the initial burden of showing that there is no genuine
19 dispute of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477
20 U.S. at 323. If the moving party does not bear the ultimate burden of persuasion at trial,
21 it nevertheless "has both the initial burden of production and the ultimate burden of
22 persuasion on a motion for summary judgment." *Nissan Fire & Marine Ins. Co. v. Fritz*

Companies, Inc., 210 F.3d 1099, 1102 (9th Cir. 2000). “In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party’s claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.” *Id.* If the moving party meets its burden of production, the burden then shifts to the nonmoving party to identify specific facts from which a factfinder could reasonably find in the nonmoving party’s favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250.

Where cross-motions are at issue, the court must “evaluate each motion separately, giving the nonmoving party in each instance the benefit of all reasonable inferences.” *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 790-91 (9th Cir. 2006) (citations omitted).

2. Whether Mr. Lindquist Made Material Misrepresentations to Allstate

Allstate has alleged that no coverage is owed under the Policy because Mr. Lindquist misrepresented or concealed the following information:

- a. The number of vandalisms to the [Fisher Road House];
- b. That the property was vacant from 2013 until the fire loss;
- c. That he was still in the process of a remodel when the fire loss took place;
- d. The nature and extent of the damages to the [Fisher Road House] over the years;
- e. The nature and extent and value of his personal property at the [Fisher Road House] at the time of the fire;
- f. Information regarding his bankruptcy;
- g. The number of times he was at the [Fisher Road House];
- h. His actions to safeguard the [Fisher Road House];
- i. The reason he had \$100,000 or more in his personal bank accounts in 2018 and 2019.

1 (Compl. ¶ 4.5.) Mr. Lindquist argues that partial summary judgment in his favor is
 2 appropriate because Allstate cannot show that he misrepresented or concealed any of this
 3 information. (Mot. at 14.)

4 Under the Policy, Allstate may decline coverage for “any loss or occurrence in
 5 which an insured has concealed or misrepresented any material fact or circumstance that
 6 exist[ed] at the time of the loss or occurrence.” (Policy at 6.) Washington courts “have
 7 long upheld” such provisions and will enforce them regardless of whether the insurance
 8 company has suffered actual prejudice from the misrepresentation. *Reverse Now VII,*
 9 *LLC v. Oregon Mut. Ins. Co.*, 341 F. Supp. 3d 1233, 1237 (W.D. Wash. 2018).
 10 “[M]isrepresentation is an affirmative defense,” so the insurer “bears the burden of
 11 proof” on this issue at trial. *Naxos, LLC v. Am. Fam. Ins. Co.*, No. C18-1287JLR, 2020
 12 WL 777260, at *9 (W.D. Wash. Feb. 18, 2020). Where the claim is “based on a
 13 misrepresentation clause” in a policy, “the standard of proof is preponderance of the
 14 evidence.” *Id.* (citing *St. Paul Mercury Ins. Co. v. Salovich*, 705 P.2d 812, 815 (Wash.
 15 Ct. App. 1985)).

16 Only a “material misrepresentation” will be sufficient “to void all coverage under
 17 the entire policy.” *Reverse Now*, 341 F. Supp. 3d at 1237 (quoting *Ki Sin Kim v. Allstate*
 18 *Ins. Co.*, 223 P.3d 1180, 1188 (Wash. Ct. App. 2009), *as amended* (Jan. 6, 2010)). A
 19 misrepresentation is material if, “from the standpoint of the insurer,” *Ki Sin Kim*, 223
 20 P.3d at 1188, “it involves a fact that is relevant to the claim or the investigation of a
 21 claim,” *Reverse Now*, 341 F. Supp. 3d at 1237 (quoting *Onyon v. Truck Ins. Exch.*, 859 F.
 22

1 Supp. 1338, 1341 (W.D. Wash. 1994)); *Allstate Ins. Co. v. Huston*, 94 P.3d 358, 363
 2 (Wash. Ct. App. 2004) (“In Washington, a misrepresentation is material ‘when it
 3 “concerns a subject relevant and germane to the insurer’s investigation as it was then
 4 proceeding” at the time the inquiry was made.’”). Materiality thus presents a “mixed
 5 question of law and fact,” although one which courts may resolve as a matter of law “if
 6 reasonable minds could not differ on the question” of whether a fact is material. *Reverse
 Now*, 341 F. Supp. 3d at 1237 (citation omitted).

8 a. *The Number of Vandalisms to the Fisher Road House*

9 Mr. Lindquist seeks partial summary judgment on Allstate’s claim that he
 10 misrepresented “[t]he number of vandalisms to the [Fisher Road House]” (Compl.
 11 ¶ 4.5(a)) because he did not misrepresent or conceal the fact that vandals caused damage
 12 to the Fisher Road House. (*See* Mot. at 15.) He points to testimony from his EOU, in
 13 which he acknowledged that the Fisher Road House had been broken into “[p]robably 15
 14 times,” and had been vandalized on “[p]robably two or three” occasions. (Lindquist
 15 EOU at 36:1-4.) Allstate does not appear to dispute Mr. Lindquist’s estimate of the
 16 number of times his home was broken into or vandalized, but rather argues that Mr.
 17 Lindquist misrepresented the “condition of the property” and the extent to which personal
 18 property inside the home had been damaged. (*See* X-MSJ at 9 (capitalization omitted);
 19 *see also id.* at 14 (arguing that Mr. Lindquist “has misrepresented the condition of his
 20 personal property and the extensive damage related to break-ins and vandalism that was
 21 done to the property”)). In particular, Allstate focuses on the discrepancy between Mr.
 22 Lindquist’s characterization in his EOU of “the vast majority” of his personal property as

1 being “in good condition” (Lindquist EOU at 86:7-9), and the reports he made to law
2 enforcement between 2013 and 2019, in which he roughly estimated that vandals and
3 burglars had done hundreds of thousands of dollars in damage to his home and its
4 contents (see Argiannis Decl. ¶¶ 5-6, Exs. C-13, C-17, C-20, D).

5 As the court previously concluded, “the evidence shows that Mr. Lindquist readily
6 admitted that the home had been broken into numerous times.” (11/24/21 Order at 14
7 (citing Lindquist EOU at 35:22-24).) In light of Mr. Lindquist’s testimony regarding
8 numerous break-ins at the Fisher Road House and because Allstate does not question
9 whether he accurately estimated the numbers of occasions on which those events
10 occurred, the court GRANTS partial summary judgment to Mr. Lindquist on this issue.
11 The court separately considers below whether Mr. Lindquist misrepresented the extent to
12 which the vandalism and break-ins caused damage to the Fisher Road House and the
13 personal property Mr. Lindquist stored there.

14 b. *Occupancy Status of the Fisher Road House Between 2013 and the*
15 *Fire Loss*

16 Mr. Lindquist argues that partial summary judgment should be granted on
17 Allstate’s claim that he misrepresented “[t]hat the property was vacant from 2013 until
18 the fire loss” (Compl. ¶ 4.5(b)) because he testified candidly that it was. (See Mot. at
19 15-16.) Indeed, the undisputed evidence clearly shows that, during its claim
20 investigation, Allstate was aware of Mr. Lindquist’s move from the Fisher Road House in
21 2013 and thoroughly questioned him about that during his EOU. (See Lindquist EOU at
22 29:3-7 (Allstate: “So after you moved out in 2013, 2014 out of the Fisher Road property,

1 did you ever move back in?”).) In response, Allstate complains that it “was only alerted
 2 to the fact of the vacancy of the Fisher Road House during the August 2020 EOU of Mr.
 3 Lindquist, approximately 8 months *after* the fire,” but does not contend that delay was
 4 part of some scheme by Mr. Lindquist to conceal the fact that the Fisher Road House was
 5 vacant at the time of the fire loss. (*See X-MSJ* at 8 (emphasis in original).)

6 Instead, the thrust of Allstate’s argument is that a question of fact exists as to
 7 whether it had *contemporaneous* awareness, between 2013 and 2019, that Mr. Lindquist
 8 had moved from the Fisher Road House. (*See id.* at 6-9, 14.) However, Allstate “fails to
 9 connect” its claimed lack of awareness to any of Mr. Lindquist’s “representations to
 10 [Allstate] during the claim” investigation. *Naxos*, 2020 WL 777260, at *15. Allstate
 11 “does not show, for example, that [it] asked [Mr. Lindquist] whether” the Fisher Road
 12 House was vacant at the time of the fire loss “during the claim process or that [Mr.
 13 Lindquist] tried to conceal” the occupancy status from it. *See id.*

14 Because the undisputed evidence shows that Mr. Lindquist was candid with
 15 Allstate during its claim investigation about the fact that he had not lived at the Fisher
 16 Road House since 2013, the court GRANTS partial summary judgment in his favor on
 17 this issue.

18 c. *Remodeling the Fisher Road House*

19 Mr. Lindquist argues that partial summary judgment is warranted on Allstate’s
 20 claim that he misrepresented “[t]hat he was still in the process of a remodel when the fire
 21 loss took place” (Compl. ¶ 4.5(c)) because he candidly disclosed the state of the remodel
 22 at the time of the fire. (*See Mot.* at 16; *see also* Lindquist EOU at 28:12-13, 96:11-97:23

1 (testifying that he moved some appliances and other items to the garage, but had not
2 begun demolition or made further progress after moving out).) Allstate does not dispute
3 that Mr. Lindquist accurately testified to the status of the remodeling at the time of the
4 fire but, rather, argues that Mr. Lindquist misrepresented the location of an upright
5 freezer unit (the “Sub-Zero”) by claiming it as a damaged kitchen item on his personal
6 property inventory when, as Mr. Lindquist testified, it was stored in the garage at the time
7 of the fire. (*See* X-MSJ at 15 (citing Howson Decl. (Dkt. # 150) ¶ 5, Ex. C at 6).)

8 It is undisputed that the Sub-Zero existed and was located in the Fisher Road
9 House garage at the time of the fire. (*See* 4/1/22 Knudsen Decl. (Dkt. # 167) ¶ 2, Ex. F
10 (depicting refrigerator in garage after the fire); *see also* Lindquist EOU at 96:11-17).) It
11 is further undisputed that Mr. Lindquist described it as a kitchen item on his personal
12 property inventory. (*See* Howson Decl., Ex. C at 6.) However, there is no reason to
13 think that the precise location of the Sub-Zero in a home that was totally and completely
14 destroyed by a fire “*could have affected*” Allstate’s investigation of Mr. Lindquist’s
15 personal property losses, as a general matter. *See Huston*, 94 P.3d at 363 (emphasis in
16 original). Moreover, Allstate alleged that Mr. Lindquist misrepresented whether he “was
17 still in the process of a remodel when the fire loss took place” (Compl. ¶ 4.5(c)). (*See* X-
18 MSJ at 15.) The undisputed evidence shows that he told them truthfully that he was and
19 a jury could not reasonably conclude that the precise location within the Fisher Road
20 House of a single appliance, which was indisputably destroyed in the fire, is material to
21 that inquiry. *See Reverse Now*, 341 F. Supp. 3d at 1237 (permitting the court to
22 determine materiality where “reasonable minds could not differ”).

1 Because the undisputed evidence shows that Mr. Lindquist did not make a
 2 misrepresentation to Allstate, and certainly not one that could have reasonably affected
 3 Allstate's claim investigation, partial summary judgment is GRANTED to Mr. Lindquist
 4 on this issue.

5 *d. Condition of the Fisher Road House and Mr. Lindquist's Personal
 Property at the Time of the Fire*

6 Mr. Lindquist moves for partial summary judgment on Allstate's claim that he
 7 misrepresented "the nature and extent of the damages to the [Fisher Road House]" prior
 8 to the fire loss in December 2019 (Compl. ¶ 4.5(d)), arguing that he provided accurate
 9 testimony "regarding the damage that occurred at the home in the years before the fire"
 10 (see Mot. at 16 (citing Lindquist EOU at 45:10-18)). Indeed, Mr. Lindquist offered
 11 specific testimony in his EOU regarding pre-existing damage to, among other things,
 12 windows and window coverings, plumbing, fixtures, furniture, a large television, a
 13 stairwell, a "climate room," an exterior gate, and an interior wall at the Fisher Road
 14 House. (See Lindquist EOU at 45:19-22, 50-55, 139:1-15; 150:3-151:5.)

15 Notwithstanding these disclosures, Allstate argues that Mr. Lindquist
 16 misrepresented material facts by characterizing his furniture as "in good condition" with
 17 "normal wear or . . . some damage from the break-ins" (Lindquist EOU at 84:9-15), as
 18 well as by offering the assessment that "the vast majority" of his "personal property was
 19 in good condition" before the fire (*id.* at 86:7-9). (See X-MSJ at 9, 14.) Allstate argues
 20 that these statements cannot be squared with estimates that Mr. Lindquist made when
 21 speaking about break-ins at his home with Snohomish County law enforcement where he
 22

1 estimated that break-ins and acts of vandalism had caused more than \$500,000 in
 2 damage. (*See id.* (citing Argiannis Decl., Exs. C-13, C-17, C-20, D).)

3 Mr. Lindquist does not dispute that he reported substantial damage to Snohomish
 4 County law enforcement officials on several occasions prior to the December 2019 fire
 5 loss. (*See Reply at 9-10.*²) Instead, he argues that his characterization of his personal
 6 property as mostly being in good condition was “a general statement of opinion, not
 7 fact,” and is consistent “with the fact that there had been some damage to the home and
 8 its contents before the fire,” and with the deposition testimony of his girlfriend, Nicki
 9 Rosling. (*Id.* (citing 4/1/22 Knudsen ¶ 2, Ex. C (“Rosling Dep. Tr.”) at 28:9
 10 (characterizing the Fisher Road House as a “beautiful house”)).) He further argues that
 11 the damage estimates he provided to law enforcement officers were “simply guess[es] on
 12 the value of *all* the damage that had occurred on the property,” which were offered “in
 13 the heat of the moment upon learning that his home had been broken into” and without
 14 the benefit of a visual inspection.” (*See Reply at 10* (emphasis in original); *see also*
 15 Argiannis Decl., Ex. D at 7 (describing Mr. Lindquist as “out of town”).)

16 Mr. Lindquist’s attempt to resolve the parties’ factual dispute is unavailing.
 17 Regardless of whether Mr. Lindquist would characterize his EOU testimony as offering
 18 facts or opinions, he understood that it would “be relied on by Allstate in any decisions
 19 //

20 ² Mr. Lindquist also does not challenge the admissibility of the law enforcement reports
 21 and the court concludes that at least the portions purporting to describe Mr. Lindquist’s
 22 statements “would be admissible as non-hearsay statements of a party opponent.” *See Sandoval*
v. Cnty. of San Diego, 985 F.3d 657, 666 (9th Cir.) (citing Fed. R. Evid. 801(d)(2)), cert. denied
sub nom. San Diego Cnty. v. Sandoval, 142 S. Ct. 711 (2021).

1 they make about the loss[.]” (See Lindquist EOU at 4:16-19.) Moreover, the court must
 2 draw all inferences about Ms. Rosling’s subjective assessment of the Fisher Road House
 3 and Mr. Lindquist’s over-the-phone estimates to law enforcement officers in favor of
 4 Allstate. Viewed in that light, a reasonable jury could conclude that Mr. Lindquist’s
 5 assertion that prior break-ins had limited impact on the condition of his property was a
 6 misrepresentation that “*could have* affected [Allstate’s] investigation.” See *Huston*, 94
 7 P.3d at 363 (emphasis in original). Accordingly, Mr. Lindquist’s motion for partial
 8 summary judgment on Allstate’s claim that he misrepresented the condition of the Fisher
 9 Road House prior to the fire loss is DENIED.

10 e. *The Nature and Extent and Value of Mr. Lindquist’s Personal*
 11 *Property at the Fisher Road House*

12 Mr. Lindquist asks for partial summary judgment on Allstate’s claim that he
 13 misrepresented “[t]he nature and extent and value of his personal property” (Compl.
 14 ¶ 4.5(e)) because there is no evidence showing that he lied about which items were in the
 15 home at the time of the fire, or that the inventory he submitted to Allstate misrepresented
 16 the replacement cost of his personal property (Mot. at 16). The court previously found,
 17 when construing the facts in Mr. Lindquist’s favor, that “a genuine dispute of material
 18 fact” existed regarding whether he had “materially misrepresented the value or content of
 19 personal property lost in the 2019 fire.” (See 11/24/21 Order at 20-21.) Mr. Lindquist
 20 notes that Allstate’s Rule 30(b)(6) witness, Ryan Jensen, could not “name a single item
 21 that . . . Mr. Lindquist claimed for that . . . wasn’t on the property” at the time of the fire.
 22 (See 3/10/22 Ruiz Decl. ¶ 13, Ex. 12 (“Jensen Dep. Tr.”) at 162:20-163:5.) But that is

1 not sufficient to resolve the factual dispute on this issue. Construing the facts in
 2 Allstate's favor, a reasonable jury could find that Mr. Lindquist materially
 3 misrepresented the "nature and extent and value of his personal property" in the Fisher
 4 Road House at the time of the fire. (Compl. ¶ 4.5(e).) Accordingly, partial summary
 5 judgment on this issue is DENIED.

6 *f. Information Regarding Mr. Lindquist's Bankruptcy*

7 Mr. Lindquist argues that partial summary judgment in his favor is warranted on
 8 Allstate's claim that he misrepresented "[i]nformation regarding his bankruptcy" (Compl.
 9 ¶ 4.5) because he "was open in his EOU about his bankruptcy and answered questions on
 10 that subject" (see Mot. at 17 (citing Lindquist EOU at 16:19-18:11)). Allstate does not
 11 actually argue that Mr. Lindquist misrepresented anything about his bankruptcy
 12 proceeding, per se. (See X-MSJ at 15.) Rather, it relies on Mr. Lindquist's bankruptcy
 13 submissions as evidence that he misrepresented the nature and value of his personal
 14 property. (See *id.*) Accordingly, Mr. Lindquist's motion for partial summary judgment
 15 on Allstate's claim that he misrepresented "[i]nformation regarding his bankruptcy"
 16 (Compl. ¶ 4.5) is GRANTED.

17 *g. The Number of Times Mr. Lindquist Was at the Fisher Road House*

18 Mr. Lindquist argues that partial summary judgment on Allstate's claim that he
 19 misrepresented "[t]he number of times he was at the [Fisher Road House]" (Compl.
 20 ¶ 4.5(g)) is appropriate in light of his testimony that he visited the Fisher Road House
 21 "often," and was there "always" or "on a daily basis" to care for horses he kept at the
 22 property. (See Mot. at 17-18 (first quoting Lindquist EOU at 98:19-99:10; then citing *id.*

1 at 29:4-14; and then citing *id.* at 56:19-57:11).) Allstate argues that complaints made to
 2 Snohomish County Animal Control by Mr. Lindquist's neighbors and passersby, which
 3 expressed concern about his horses being neglected, creates a triable issue of fact
 4 regarding whether Mr. Lindquist "had in fact abandoned the [Fisher Road House], or how
 5 often he went to the [Fisher Road House]." (*See* X-MSJ at 16 (citing 3/28/22 O'Neill
 6 Decl. ¶ 13, Ex. K ("Animal Control Reports")).) On reply, Mr. Lindquist argues that the
 7 Animal Control Reports should be excluded from consideration as containing non-
 8 exempt hearsay and that, even if they may be considered, they do not provide evidence of
 9 a misrepresentation regarding the extent to which he visited the Fisher Road House. (*See*
 10 Reply at 11.)

11 The complaints made to Snohomish County Animal Control, which are quoted in
 12 the Animal Control Reports, would constitute inadmissible hearsay if Allstate offered the
 13 reports for the truth of those complaints. *See* Fed. R. Evid. 802. Other aspects of the
 14 Animal Control Reports, however, would be admissible through the direct testimony of
 15 the authoring Snohomish County Animal Control officer. If called to testify at trial, that
 16 official could "testify about the personal observations reflected in [their] official reports."
 17 *See Sandoval*, 985 F.3d at 666. Likewise, the officer could testify about their
 18 conversations with Mr. Lindquist and relay what he said, as any statements made by Mr.
 19 Lindquist "would be admissible as non-hearsay statements of a party opponent." *See id.*
 20 (citing Fed. R. Evid. 801(d)(2)). Hearsay thus provides "no basis for excluding the
 21 objected-to documents in their entirety." *See id.*

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1 Considering the admissible portions of the Animal Control Reports, and
 2 construing that evidence in the light most favorable to Allstate, a jury could reasonably
 3 conclude that Mr. Lindquist misrepresented the extent to which he visited the Fisher
 4 Road House, but not that he had abandoned it altogether. For instance, Animal Control
 5 Reports show that, on at least one occasion, Animal Control Officers were unable to
 6 reach Mr. Lindquist for several days, despite placing a notice on the gated entrance to the
 7 Fisher Road House requesting that he contact them immediately. (*See, e.g.*, Animal
 8 Control Reports at 17.) While that evidence provides no basis to conclude that Mr.
 9 Lindquist abandoned the Fisher Road House altogether (*see id.* (observing food and water
 10 stored at the Fisher Road House and finding “[n]o violations” of animal abuse)), a
 11 reasonable jury could infer that Mr. Lindquist visited the Fisher Road House somewhat
 12 less frequently than the “daily” visits to which he testified during his EOU. (*See*
 13 Lindquist EOU 57:9-10.) The parties do not address whether that misrepresentation is
 14 material and the court declines to decide that issue because reasonable minds could differ
 15 on whether the frequency with which Mr. Lindquist visited the Fisher Road House would
 16 have been material to Allstate’s claim investigation. *Reverse Now*, 341 F. Supp. 3d at
 17 1237.

18 Accordingly, the court DENIES partial summary judgment to Mr. Lindquist on
 19 Allstate’s claim that he misrepresented “[t]he number of times he was at the [Fisher Road
 20 House]” (Compl. ¶ 4.5(g)).

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1 *h. Mr. Lindquist's Actions to Safeguard the Fisher Road House*

2 Mr. Lindquist asks the court to grant partial summary judgment in his favor on
 3 Allstate's claim that he misrepresented facts concerning “[h]is actions to allegedly
 4 safeguard the [Fisher Road House]” (Compl. ¶ 4.5(h)) because he truthfully testified in his
 5 EOU “about placing locks on the gate and changing the pattern of when he went to the
 6 property.” (*See* Mot. at 18 (citing Lindquist EOU at 56:19-57:22).) Allstate does not
 7 argue that Mr. Lindquist misrepresented any facts regarding the steps he took to
 8 safeguard the Fisher Road House, as alleged in the complaint, but rather asserts that Mr.
 9 Lindquist's “inability” to do so sufficiently “was the reason the property was subject to
 10 the various break-ins” between 2013 and 2019. (*See* X-MSJ at 14.) Accordingly, the
 11 court GRANTS partial summary judgment to Mr. Lindquist on this issue.

12 *i. The Reason Mr. Lindquist Had \$100,000 or More in His Personal
 13 Bank Accounts in 2018 and 2019*

14 Mr. Lindquist asks the court to grant partial summary judgment in his favor on
 15 Allstate's claim that he misrepresented “[t]he reason he had \$100,000 or more in his
 16 personal bank accounts in 2018 and 2019” (Compl. ¶ 4.5(i)). (*See* Mot. at 18.) He argues
 17 that no misrepresentation occurred because, in response to questions from Allstate's
 18 counsel, he testified truthfully regarding a bank account that he uses as a personal
 19 account, which bears the name of his former business, Detroit Water Works. (*See id.*
 20 (citing Lindquist EOU at 156:4-24).) Allstate does not claim that Mr. Lindquist lied or
 21 left out key facts in his EOU, only that his testimony left it with lingering questions about
 22 “what money is his, versus” that of his current employer, Wild West Cars and Trucks.

(See X-MSJ at 15.³) Because Allstate does not actually assert that Mr. Lindquist misrepresented anything about his personal bank accounts, partial summary judgment is GRANTED in Mr. Lindquist's favor on this issue.

3. Whether the Policy's Vandalism Exclusion Applies

Mr. Lindquist asks the court to find that the Policy’s vandalism exclusion does not apply and to grant him partial summary judgment on that issue. (*See* Mot. at 19; *see also* Compl. ¶¶ 4.3, 4.4.) He argues that partial summary judgment is warranted in light of the testimony of Allstate’s fire expert, Mr. Crowley, who found it “reasonable” to conclude that the Fisher Road House fire was started by a trespassing occupant “using an open flame device, such as a candle, to keep warm” (*see* Crowley Decl. (Dkt. # 139-3) ¶ 6, Ex. 4 (“Crowley Report”) at 8). (*See* Mot. at 19-21.) According to Mr. Lindquist, this testimony precludes a finding that the fire was started intentionally, let alone maliciously so, as would be necessary to conclude that it was the product of vandalism. (*See* Reply at 5.) Allstate focuses on the same passage from Mr. Crowley’s report but argues that it suffices to raise “a question of fact . . . as to whether the fire was caused as a result of vandalism.” (X-MSJ at 12 (citing Crowley Report at 8).)

The vandalism exclusion provides that Allstate owes no coverage for losses caused by “[v]andalism or [m]alicious [m]ischief” if the insured’s “dwelling is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or

³ Allstate additionally argues that Mr. Lindquist misrepresented facts relating to his opportunity to burn the Fisher Road House down. (*See id.* at 10.) However, Allstate did not assert any such misrepresentation claim in its complaint (*see Compl. ¶ 4.5*), nor is that a claim on which Mr. Lindquist has moved (*see Mot.* at 15-18).

1 malicious mischief.” (Policy at 9.) Vandalism is not defined in the Policy but that term
 2 has been routinely defined by courts in Washington “as ‘willful or malicious destruction
 3 or defacement of things of beauty or of public or private property.’” *See, e.g., Bowers v.*
 4 *Farmers Ins. Exch.*, 991 P.2d 734, 737 (Wash. Ct. App. 2000) (quoting Webster’s Third
 5 New Int’l Dictionary 2532 (1993)), *as amended on reconsideration* (Mar. 7, 2000); *Graff*
 6 *v. Allstate Ins. Co.*, 54 P.3d 1266, 1269 (Wash. Ct. App. 2002) (finding that intentional
 7 acts done without regard to property interests which produce a harmful result that was
 8 “almost a certainty” “meet[] the definition of vandalism”). Importantly, “[i]n this
 9 context, malice does not require ill will, hatred, or vindictiveness of purpose,” but rather
 10 “may be inferred from the act of destruction. It is sufficient if the actor is guilty of
 11 wanton or intentional disregard of the rights of others.” *Bowers*, 991 P.2d at 737.

12 Drawing all inferences in Allstate’s favor, the record shows that the Fisher Road
 13 House had a history of individuals trespassing onto the property and damaging the Fisher
 14 Road House and its contents in various ways. (*See* Lindquist EOU at 36:1-4.)
 15 Additionally, there is evidence in the record that the December 25, 2019 fire may have
 16 been caused by an individual trespassing onto the property and using an open flame
 17 inside the home. (*See* Crowley Report at 8.) A reasonable jury could thus conclude that
 18 the fire loss was the result of vandalism. *See Graff*, 54 P.3d at 1269. Notably, and
 19 contrary to Mr. Lindquist’s assertion, that conclusion does not require a factfinder to
 20 draw unwarranted assumptions about the propensity of unhoused individuals to commit
 21 arson or vandalism, or to conclude that whoever started the fire meant to burn down the
 22 house. (*See* Reply at 5.) It would be enough for the jury to conclude that, by entering the

1 Fisher Road House without Mr. Lindquist's permission and purposefully using an open
2 flame inside the home, they committed an “intentional act from which damage was
3 reasonably expected to result.”” *Graff*, 54 P.3d at 1269 (citations omitted) (quoting
4 *Bowers*, 991 P.2d at 737). Construed in Allstate’s favor, the record before the court
5 would support that conclusion.

6 Accordingly, Mr. Lindquist’s motion for partial summary judgment on the
7 application of the vandalism exclusion is DENIED.

8 4. Whether Mr. Lindquist Abandoned the Fisher Road House

9 Mr. Lindquist next asks the court for partial summary judgment on Allstate’s
10 claim that he abandoned the Fisher Road House. (*See* Mot. at 20.) The court has already
11 concluded that no reasonable jury could conclude that Mr. Lindquist abandoned the
12 Fisher Road House. *See supra* at 20. Accordingly, Mr. Lindquist’s motion for partial
13 summary judgment is GRANTED on Allstate’s claim that he abandoned the Fisher Road
14 House.

15 5. Whether Mr. Lindquist Intentionally Caused the Fire

16 Mr. Lindquist further asks the court for partial summary judgment on whether he
17 intentionally caused the fire at the Fisher Road House. (*See* Mot. at 19.) Mr. Lindquist
18 argues that partial summary judgment in his favor is appropriate either because Allstate
19 failed to plead that he “intentionally caused or contributed to the fire” or because that
20 theory is unsupported by the conclusions of Allstate’s own fire investigator, who found
21 that it was possible the fire was caused by “a human occupant . . . using an open flame
22 device, such as a candle, to keep warm.” (*See id.* (quoting Crowley Report at 8).)

1 Allstate sufficiently alleged, “[o]n information and belief,” that “the cause of the fire was
 2 intentional” (Compl. ¶ 3.12; *see also id.* ¶¶ 4.3-4.4), and now argues that the record
 3 contains evidence from which a reasonable jury could conclude that “Mr. Lindquist had a
 4 financial motive, and an opportunity to intentionally burn the house down” (*see X-MSJ at*
 5 17).

6 Under the terms of the Policy, Allstate did not agree to cover losses caused by the
 7 “[i]ntentional or criminal acts of or at the direction of any insured person, if the loss that
 8 occurs: a) may be reasonably expected to result from such acts; or b) is the intended
 9 result of such acts.” (Policy at 8 (emphasis omitted).) Such intentional loss exclusions
 10 are enforceable under Washington law. *See IDS Prop. Cas. Ins. Co. v. Crawford*, 16 F.
 11 Supp. 3d 1236, 1239 (W.D. Wash. 2014), *aff’d*, 671 F. App’x 524 (9th Cir. 2016). “[A]n
 12 insurer makes a *prima facie* case of arson when it establishes that the fire was of
 13 incendiary origin and the insured had motive and opportunity.” *See Am. States Ins. Co. v.*
 14 *Symes of Silverdale, Inc.*, 45 P.3d 610, 618 (Wash. Ct. App. 2002), *as amended* (July 26,
 15 2002), *reversed on other grounds*, 78 P.3d 1266 (Wash. 2003); *see also Ciao Giuseppe,*
 16 *Inc. v. Reliance Ins. Co.*, 74 F.3d 1245 (9th Cir. 1996) (instructing courts to consider
 17 “whether the fire in question was of incendiary origin” and whether the insured had the
 18 opportunity and motive “to set the fire or cause it to be set”). The insurer must prove
 19 arson by a preponderance of the evidence, and may rely on circumstantial evidence to do
 20 so. *See Great Am. Ins. Co. v. K & W Log, Inc.*, 591 P.2d 457, 460 (Wash. Ct. App. 1979)
 21 (quoting *State v. Young*, 550 P.2d 1, 6 (Wash. 1976) (“It is judicially recognized that a

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1 well-connected train of circumstances may be as satisfactory as an array of direct
 2 evidence.”)).

3 The evidence of arson is cross-cutting and much disputed. With respect to the
 4 fire’s “incendiary origin,” *Am. States Ins. Co.*, 45 P.3d at 618, Mr. Lindquist argues that
 5 Mr. Crowley’s report dispository concludes that the fire was the result of an
 6 unauthorized occupant using an open flame for an innocent purpose, like heating or
 7 cooking. (*See* Mot. at 19 (citing Crowley Report at 5, 8).) On the other hand, Allstate
 8 argues that Mr. Crowley’s report is fairly read as establishing only that the fire was
 9 human-caused (and, therefore, of an incendiary origin), but leaving open the possibility
 10 that the responsible human was Mr. Lindquist. (*See* X-MSJ at 17 (citing Crowley Report
 11 at 8).) That is a “justifiable inference[]” to draw in Allstate’s favor, *Anderson*, 477 U.S.
 12 at 255, given that Mr. Crowley’s only firm conclusion is that “[h]uman activity was
 13 responsible for the cause of [the Fisher Road House] fire” (*see* Crowley Report at 7-8).

14 With respect to a possible motive, the record is replete with evidence that Mr.
 15 Lindquist struggled financially in the years leading up to the fire loss. For instance, he
 16 testified in his EOU that he moved from the Fisher Road House because of “the expense
 17 of the house,” which was too much in light of a “legal battle with” a former creditor that
 18 resulted in the seizure of his “business bank account” (*see* Lindquist EOU at 28:7-19);
 19 subsequently filed for bankruptcy (*see id.* at 17:1-10); owed an estimated \$2.3 million on
 20 the Fisher Road House mortgage to Chase, but had not “made a payment” since
 21 “February of 2011” (*id.* at 21:5-13); and, as a result, was sued by Chase in 2018 in an
 22 action to foreclose on Fisher Road House (*see* 10/21/21 Argiannis Decl. ¶ 7, Ex. E at 1,

1 4). That evidence would permit a reasonable jury to conclude that Mr. Lindquist had a
 2 financial motive to burn down the Fisher Road House. *See Great Am. Ins. Co.*, 591 P.2d
 3 at 460 (finding evidence that the insured was indebted and “experiencing serious
 4 financial difficulties” to be circumstantial evidence that the insured intentionally caused
 5 the fire loss).

6 Finally, with respect to Mr. Lindquist’s opportunity to burn down the Fisher Road
 7 House, he notes that he and Ms. Rosling both testified that they were meeting in
 8 Shoreline for dinner and a movie at about the time the fire would have started. (*See*
 9 Reply at 4 (first citing Lindquist EOU at 72-73; and then citing Rosling Dep. Tr. at 36:1-
 10 38:24).) Allstate rebuts this testimony through the report of its digital forensics expert
 11 witness, Brian Chase, who plans to testify that Mr. Lindquist’s cell phone data contradicts
 12 his testimony about where he was when the fire began. (*See* X-MSJ at 10 (citing 2/16/22
 13 O’Neill Decl. (Dkt. # 139) ¶ 2, Ex. B (“Chase Report”) at 7).) Mr. Lindquist offers his
 14 own digital forensics expert, Randall Karstetter, who plans to rebut Mr. Chase’s report by
 15 opining that “the location conclusions in [his] report are, by their nature, imprecise.”
 16 (*See* 4/1/22 Knudsen Decl. ¶ 2, Ex. B (“Karstetter Report”) at 3 ¶ 7.) The court does not
 17 consider Mr. Karstetter’s rebuttal report, which is unsigned (*see id.* at 3); *see also Harris*
 18 *v. Extendicare Homes, Inc.*, 829 F. Supp. 2d 1023, 1027 (W.D. Wash. 2011) (noting that
 19 “courts in this circuit have routinely held that unsworn expert reports are inadmissible”
 20 and collecting cases), but nevertheless concludes that this factor turns on disputed facts.
 21 Construed in Allstate’s favor, the record would permit a reasonable jury to find by
 22 “a fair preponderance of the evidence” that Mr. Lindquist intentionally caused the fire

1 at the Fisher Road House. *See Great Am. Ins. Co.*, 591 P.2d at 459 (quoting *Bruff v. Nw.
Mut. Fire Ass'n*, 109 P. 280, 281 (Wash. 1910)). Accordingly, Mr. Lindquist's motion
2 for partial summary judgment on Allstate's claim that he intentionally caused the fire at
3 the Fisher Road House is DENIED.

5 6. Violations of Washington Insurance Regulations

6 Mr. Lindquist next moves for partial summary judgment on Allstate's alleged
7 violations of various Washington insurance regulations, which he notes "are relevant to
8 bad-faith claims, Consumer Protection Act [("CPA")] claims, and aspects of Insurance
9 Fair Conduct Act claims." (*See Mot.* at 21-22.) Specifically, Mr. Lindquist seeks partial
10 summary judgment that Allstate violated WAC 284-30-330(4), WAC 284-30-330(5),
11 WAC 284-30-370, and WAC 284-30-380(1). (*See Mot.* at 21.) Allstate opposes and also
12 cross-moves for partial summary judgment in its own favor, asserting that it complied
13 fully with applicable insurance regulations in conducting its claim investigation and
14 initiating a declaratory judgment action. (*See X-MSJ* at 16-19.) The court considers each
15 regulation in turn.

16 a. WAC 284-30-330(4)

17 WAC 284-30-330(4) provides that "[r]efusing to pay claims without conducting a
18 reasonable investigation" is an "unfair method[] of competition and unfair or deceptive
19 act[] or practice[]." *See WAC 284-30-330(4)*. The court concludes that neither party has
20 carried their burden to establish whether Allstate conducted a reasonable investigation
21 prior to denying Mr. Lindquist's claim.

22 //

1 In support of his motion, Mr. Lindquist identifies various investigative steps
 2 Allstate failed to take, including: (1) contacting Mr. Howson or Mr. Eggert to discuss
 3 Mr. Lindquist's proofs of loss and inventories (Mot. at 22 (citing Howson Decl. ¶ 13));
 4 (2) creating its own "inventory of contents or investigative values" (*id.* at 22-23 (citing
 5 3/10/22 Ruiz Decl. ¶ 10, Ex. 10 ("Follett Dep. Tr.") at 42:17-23)); (3) cataloging Mr.
 6 Lindquist's "personal property," "sift[ing] through the debris, or identify[ing]
 7 replacement-cost values" (*see* Reply at 12 (first citing Jensen Dep. Tr. at 170:13-171:9;
 8 then citing Follett Dep. Tr. at 38:21-39:13; and then citing Follett Dep. Tr. at 42:6-14,
 9 71:5-6, and 72:17-21)); and (4) discussing Mr. Crowley's report with him after he
 10 delivered it to Allstate (*see id.* (citing Crowley Dep. Tr. at 161:19-162:20)). He does not,
 11 however, explain why Allstate's failure to take the investigative steps he identifies
 12 rendered its entire claim investigation unreasonable, as a matter of law. (*See* Mot. at 21-
 13 23; Reply at 12); *see also GCG Assocs. LP v. Am. Cas. Co. of Reading Pa.*, No.
 14 C07-792BHS, 2008 WL 3542620, at *10 (W.D. Wash. Aug. 8, 2008) (finding that the
 15 reasonableness of an investigation turns on "the sufficiency of the investigation
 16 that *actually occurred*" (emphasis in original)). Moreover, to the extent that Mr.
 17 Lindquist argues that Allstate's investigation was unreasonable because it sought to
 18 pursue a speculative theory of arson or vandalism (*see* Lether Decl. (Dkt. # 178) ¶ 2, Ex.
 19 A ("Lether Report") at 6), factual questions remain that would bear on the reasonableness
 20 of that pursuit, *see supra* 24-28; *see also Indus. Indem. Co. of the Nw. v. Kallevig*, 792
 21 P.2d 520, 526 (Wash. 1990) ("[A]n insurer . . . may not deny coverage based on a
 22 //"

1 supposed defense which a reasonable investigation would have proved to be without
 2 merit.”).

3 Allstate primarily supports its cross-motion with the conclusion of its claims
 4 handling expert, Danette K. Leonhardi, who opines that Allstate conducted a reasonable
 5 and timely investigation of a complex claim. (*See* X-MSJ at 18 (citing 2/16/22 O’Neill
 6 Decl. ¶ 1, Ex. A (“Leonhardi Report” at 11-12).) Even if Ms. Leonhardi’s testimony is
 7 admissible,⁴ it is contradicted by Mr. Lindquist’s claims handling expert, Thomas Lether,
 8 who opines that Allstate had ample information with which to resolve Mr. Lindquist’s
 9 claim “within a short period of time following the loss” and, thus, “failed to comply with
 10 the standard of the industry to perform a good faith claims investigation.” (*See* Lether
 11 Report at 9.) Likewise, Allstate’s contention that any unreasonable delay in its
 12 investigation is the fault of Mr. Lindquist is a disputed claim. (*See* X-MSJ Resp. at 6; *see*
 13 also 3/10/22 Ruiz Decl. ¶ 12, Ex. 11 (January 3, 2020 letter from Allstate addressed to
 14 Mr. Lindquist at the Fisher Road House).)

15 Because, on the record before it, the court cannot determine the reasonableness of
 16 Allstate’s claim investigation as a matter of law, partial summary judgment is DENIED
 17 to both parties on Allstate’s alleged violation of WAC 284-30-330(4).

18 //

19 ⁴ Although Mr. Lindquist does not challenge the admissibility of Ms. Leonhardi’s report
 20 in his opposition brief (*see generally* X-MSJ Resp.), he subsequently filed a motion to exclude
 21 substantial portions of her testimony as offering opinions on legal issues (*see* Exclusion Mot.
 22 (Dkt. # 202)). The court will address the admissibility of Ms. Leonhardi’s testimony when it has
 the benefit of the parties’ briefing on this matter. It need not resolve the issue here because it
 does not rely on Ms. Leonhardi’s opinion testimony to either deny Mr. Lindquist’s motion or
 grant Allstate’s cross-motion.

1 b. WAC 284-30-370

2 WAC 284-30-370 provides that an insurer “must complete its investigation of a
3 claim within thirty days after notification of claim, unless the investigation cannot
4 reasonably be completed within that time.” WAC 284-30-370. It is undisputed that
5 Allstate did not complete its investigation within thirty days of receiving notice of Mr.
6 Lindquist’s claim. (*See generally* Crowley Report; *see also* 3/28/22 O’Neill Decl. ¶ 11,
7 Ex. I (August 17, 2020 letter noting that “Allstate’s investigation into this matter is
8 ongoing).) And Mr. Lindquist does not suggest that Allstate could have completed its
9 investigation in that time. (*See* Mot. at 21-23; Reply at 11-12.) Indeed, doing so would
10 have meant that Allstate concluded its investigation before speaking with Mr. Lindquist
11 (*see generally* Lindquist EOU) or reviewing the findings of its own fire expert, Mr.
12 Crowley, or those of the Snohomish County Fire Marshal (*see* Crowley Report at 3, 6).

13 However, Allstate chiefly relies on the report of Ms. Leonhardi, who opines that
14 “[i]t is not unreasonable . . . for a complex fire damage claim to require time in excess of
15 30 days, even a year or more, for a complete investigation.” (*See* X-MSJ at 16 (citing
16 Leonhardi Report at 11).) She further asserts that Allstate’s investigation took longer, in
17 part, because Mr. Lindquist was unavailable to sit for his EOU or otherwise assist in the
18 claim investigation “for nearly 8 months.” (*See* Leonhardi Report at 11.) Even if Ms.
19 Leonhardi’s opinion testimony is deemed admissible, it provides an insufficient basis for
20 partial summary judgment because her opinion is contested by Mr. Lindquist’s own claim
21 handling expert. (*See* Lether Report at 9 (asserting that Allstate had ample information
22 with which to resolve Mr. Lindquist’s claim “within a short period of time following the

1 loss”.) Moreover, Ms. Leonhardi’s opinion is based, in large measure, on the assertion
 2 that Mr. Lindquist bears full responsibility for his EOU being delayed until August 2020
 3 (Leonhardi Report at 11), which is a disputed fact, *see supra* at 30.

4 Because factual disputes preclude the court from determining whether Allstate
 5 acted reasonably when it took more than thirty days to complete its claim investigation,
 6 the court must DENY partial summary judgment for both parties on Allstate’s alleged
 7 WAC 284-30-370 violation.

8 c. *WAC 284-30-330(5) and WAC 284-30-380(1)*

9 WAC 284-30-330(5) provides that “[f]ailing to affirm or deny coverage of claims
 10 within a reasonable time after fully completed proof of loss documentation has been
 11 submitted” is an “unfair method[] of competition and unfair or deceptive act[] or
 12 practice.” WAC 284-30-330(5). And WAC 284-30-380(1) provides that “[w]ithin
 13 fifteen working days after receipt by the insurer of fully completed and executed proofs
 14 of loss, the insurer must notify the first party claimant whether the claim has been
 15 accepted or denied.” WAC 284-30-380(1).

16 Mr. Lindquist fails to establish that the 42 working days that elapsed between
 17 August 13, 2020, when Allstate received his proof of loss documentation (*see* 3/10/22
 18 Ruiz Decl., Ex. 16), and October 13, 2020, when Allstate filed this lawsuit (*see* Compl.),
 19 was unreasonable as a matter of law. Indeed, Allstate complied with
 20 WAC-284-30-380(1) when it sent a letter to Mr. Lindquist on August 17, 2020 stating
 21 that it required additional time to review documents Mr. Lindquist provided just before
 22 his EOU, as well as his proofs of loss and inventory. (*See* 3/28/22 O’Neill Decl. ¶ 11,

1 Ex. I.) And because Allstate provided timely notice to Mr. Lindquist, it did not need to
 2 provide further notice for an additional “forty-five working days after the date of the”
 3 August 17, 2020 letter. *See WAC 284-30-380(3)*. Within that time period, Allstate made
 4 its coverage decision perfectly clear by filing this lawsuit on October 13, 2020. *See*
 5 *Berkshire Hathaway Homestate Ins. Co. v. SQI, Inc.*, 132 F. Supp. 3d 1275, 1293 (W.D.
 6 Wash. 2015) (finding a “lawsuit asserting that no coverage exists” serves to
 7 “unequivocally den[y] coverage”). Moreover, because Allstate complied with the time
 8 requirements of WAC 284-30-380(3), its coverage determination on October 13, 2020
 9 was necessarily made “within a reasonable time.” *Compare* WAC 284-30-380(3), *with*
 10 WAC 284-30-330(5).

11 Accordingly, the court DENIES Mr. Lindquist’s motion for partial summary
 12 judgment and GRANTS Allstate’s motion for partial summary judgment on the issue of
 13 whether Allstate violated WAC 284-30-330(5) or 284-30-380(1).

14 7. Whether Allstate Engaged in Bad Faith

15 Mr. Lindquist’s seeks partial summary judgment on the issue of whether Allstate
 16 engaged in bad faith as a matter of law. (*See* Mot. at 23-24; *see also* Answer ¶¶ 144-150,
 17 156-165.) However, Allstate retains live misrepresentation claims, *see supra* at 9-22, and
 18 “courts have consistently ruled that policyholders who render their contracts void by their
 19 own fraud may not pursue claims of bad faith against the insurer.” *See Tudor Ins. Co. v.*
 20 *Hellickson Real Est.*, 493 F. App’x 895, 897 (9th Cir. 2012) (first citing *Ki Sin Kim*, 223
 21 P.3d at 1189; and then citing *Mutual of Enumclaw Ins. Co. v. Cox*, 757 P.2d 499, 504
 22 (1988)). Courts thus decline to grant partial summary judgment in favor of insureds on

1 IFCA, CPA, or bad faith claims “so long as [the insurer] has live claims for
 2 misrepresentation.” *See Naxos*, 2020 WL 777260, at *19. Accordingly, Mr. Lindquist’s
 3 motion for partial summary judgment on Allstate’s alleged bad faith is DENIED.

4 The court also DENIES Allstate’s cross-motion for partial summary judgment on
 5 this issue because it turns, in large measure, on whether Allstate committed regulatory
 6 violations (*see Mot. at 23*); *see also Tank v. State Farm Fire & Cas. Co.*, 715 P.2d 1133,
 7 1136 (Wash. 1986) (noting that the insurance regulations at WAC 284-30-330 *et seq.*
 8 “defin[e] specific acts and practices which constitute a breach of an insurer’s duty of
 9 good faith”). Although Allstate has shown that it did not violate WAC 284-30-330(5) or
 10 WAC 284-30-380(1), questions of fact remain for the jury to decide with respect to WAC
 11 284-30-330(4) and WAC 284-30-370, *see supra* at 28-32. If Mr. Lindquist convinces the
 12 jury of those regulatory violations at trial, he may further show that Allstate engaged in
 13 bad faith. *See Tank*, 715 P.2d 1136. Accordingly, Allstate is not entitled to partial
 14 summary judgment as a matter of law and its cross-motion is DENIED.

15 8. Mr. Lindquist’s Entitlement to Coverage

16 As set forth above, factual disputes remain to be resolved by the jury which will
 17 bear on Mr. Lindquist’s entitlement to coverage. If Allstate prevails on those factual
 18 disputes and demonstrates either that a Policy exclusion applies or that Mr. Lindquist
 19 misrepresented material facts during its claim investigation, he will not be entitled to
 20 coverage. Accordingly, Mr. Lindquist is not entitled to coverage as a matter of law and
 21 his motion for partial summary judgment on that issue is DENIED.

22 //

IV. CONCLUSION

For the foregoing reasons, the court ORDERS as follows: Allstate's motion for a continuance under Federal Rule of Civil Procedure 56(d) is DENIED; Allstate's motion for leave to file a supplemental opposition brief (Dkt. # 192) is DENIED; Mr. Lindquist's motion for partial summary judgment (Dkt. # 147) is GRANTED in part and DENIED in part; and Allstate's cross-motion for partial summary judgment (Dkt. # 162) is GRANTED in part and DENIED in part.

Dated this 20th day of May, 2022.

John P. Blunt

JAMES L. ROBART
United States District Judge